

## REMARKS

This application has been carefully reviewed in light of the Office Action dated August 3, 2009. Claims 1 to 49 are in the application, of which Claims 1 to 3 and 7 to 49 are withdrawn from consideration. The independent claims under consideration are Claims 4 and 5. Reconsideration and further examination are respectfully requested.

Claims 4 to 6 were objected to for containing non-elected subject matter. When the application is otherwise in condition for allowance, Applicants will consider the possibility of deleting the non-elected subject matter from the claims.

Claims 4 to 6 were rejected under 35 U.S.C. § 112, first paragraph, for alleged failure to provide written description support for the recitation of “optionally a label” in Claims 4 and 5. These rejections are respectfully traversed, and are submitted to have been obviated by the amendments made herein.

Claims 4 to 6 were rejected under 35 U.S.C. § 103(a) over U.S. Publication No. 2004/0010129 (Hsu) in view of U.S. Patent No. 6,376,186 (Hogan). These rejections are respectfully traversed.

According to a feature of the invention as recited by Claims 4 and 5, the probe set includes plural types of probes consisting of different types of oligonucleotides, where the different types of oligonucleotides consist of different base sequences selected from SEQ ID Nos. 1 to 14 or the complementary sequences thereof.

By virtue of the foregoing, it is possible to provide a probe set with probes that combine at different portions of the 16sRNA gene. As such, it is possible to accurately detect a variant of *Staphylococcus aureus* in which base sequences locally change.

Neither Hsu nor Hogan, even in the proposed combinations, assuming,

*arguendo*, that such could be combined, is seen to disclose or suggest at least the above-discussed feature.

Dependent Claim 6 is also submitted to be patentable because it sets forth additional aspects of the present invention and is dependent from an independent claim discussed above. Therefore, separate and individual consideration of this dependent claim is respectfully requested.

With respect to non-elected Claim 7, rejoinder of this claim is respectfully requested upon the allowance of Claim 6, pursuant to MPEP § 821.04(b).

The application is believed to be in condition for allowance, and a Notice of Allowance is respectfully requested.

Applicants' undersigned attorney may be reached in our Costa Mesa, California office by telephone at (714) 540-8700. All correspondence should be directed to our address given below.

Respectfully submitted,

/Damond E. Vadnais/  
Damond E. Vadnais  
Attorney for Applicants  
Registration No. 52,310

FITZPATRICK, CELLA, HARPER & SCINTO  
1290 Avenue of the Americas  
New York, New York 10104-3800  
Facsimile: (212) 218-2200

FCBS\_WS 4122048v1